

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
DAVID M. GLOVER, JUDGE

DIVISION III

CACR06-788

March 14, 2007

MARY DIAL MADDOX  
APPELLANT  
V.  
STATE OF ARKANSAS  
APPELLEE

APPEAL FROM THE WHITE  
COUNTY CIRCUIT COURT  
[CR-06-42]

HONORABLE ROBERT EDWARDS,  
JUDGE

AFFIRMED

Appellant, Mary Dial Maddox, was charged with several drug-related offenses. She sought to suppress items obtained in a search of her house and an outbuilding. Following the suppression hearing, the trial court denied her motion. At that point, appellant entered a conditional plea of guilty pursuant to Arkansas Rules of Criminal Procedure Rule 24.3, and pursuant to that plea she was sentenced to a total of ten years' imprisonment in the Arkansas Department of Correction. She appeals from the trial court's denial of her motion to suppress, raising two points of appeal: 1) a law enforcement officer may not make a warrantless entry into a residence unless he has probable cause and exigent circumstances; 2) the warrant issued as a result of the initial

unlawful entry is in violation of *Wong Sun v. United States*, the Fourth Amendment, and Arkansas case law. We affirm.

### *Appellate Jurisdiction*

As a preliminary matter, the State contends that this court lacks jurisdiction to hear this appeal because appellant failed to comply strictly with Rule 24.3(b). In particular, the State argues that appellant's initial plea statement waived her right to appeal; that there was no evidence the trial court had consented to the plea at the time the original plea statement was signed by appellant; and that there is no document in the record where the trial court explicitly consented to the plea. We find that appellant satisfied the requirements of the rule and that we have jurisdiction to hear this appeal.

Rule 24.3(b) provides:

(b) With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement. If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

In *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999), our supreme court explained that it has interpreted Rule 24.3(b) to require strict compliance with the requirement that the right to appeal be reserved in writing; otherwise, the appellate court does not obtain jurisdiction. In addition, the court explained that it had further interpreted Rule 24.3(b)

“to require that there be a *contemporaneous* writing by the defendant reserving his or her right to appeal.” *Id.* at 168, 984 S.W.2d at 446. There must also be an indication that the conditional-guilty plea was entered with the approval of the trial court and the consent of the prosecuting attorney. *Id.*

Here, although the parties had been alerted on May 8 that the trial court was going to deny the motion to suppress, the actual hearing in which it did so was held on May 10, 2006. Near the end of that hearing the trial court acknowledged that, in light of its ruling, it had been informed that appellant and the State had entered an agreement whereby appellant would enter a negotiated plea of guilty, reserving her right to appeal the adverse determination of her motion to suppress entered on that date. The court then addressed appellant personally and stated that it had a document “entitled a guilty plea statement, which appears to bear your signature.” The court next asked her if she had read and signed the document, and appellant affirmed that she had. At that time, the court explained the rights that she would be relinquishing and asked if she had been threatened or intimidated or if anyone had promised her anything to get her to plead guilty. The court then asked her what her plea was to the various charges, to which she responded “guilty.”

The following documents were filed on May 10, 2006, presumably immediately following the hearing: the order denying appellant’s motion to suppress; appellant’s initial conditional guilty-plea statement, which contained a paragraph waiving her right to appeal from, *inter alia*, the “judgment, challenging all issues of fact and law,” with such

statement signed by appellant and her attorney; appellant's addendum to plea agreement, which corrected the original statement to specifically state that she reserved her right to appeal the adverse determination of her motion to suppress, signed by appellant and her attorney; a consent addendum to plea agreement, signed by the deputy prosecuting attorney and approved by the trial court; and the judgment.

In making its argument, the State relies upon the cases of *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999); *Grupa v. State*, 83 Ark. App. 389, 128 S.W.3d 470 (2003); and *McMullen v. State*, 79 Ark. App. 15, 82 S.W.3d 827 (2002). These cases are distinguishable on the facts and are not controlling here. For example, the State argues that appellant failed to strictly comply with the rule because she "initialed and signed a document specifically waiving her right to appeal," and cites *McMullen* in support of that argument. We would agree if it were not for the fact that appellant's addendum to her plea agreement corrected the original statement and specifically reserved her right to appeal the adverse determination of her motion to suppress. The addendum itself was signed by appellant and her attorney, and the consent addendum to the plea agreement was signed by the deputy prosecuting attorney and approved by the trial court. Those facts distinguish *McMullen*.

In addition, the State argues that the record contains no documents in which the trial court explicitly consented to the conditional-plea agreement, although the trial court did indicate its approval of the prosecutor's consent and the judgment states that the plea was conditional. As mentioned previously, and as acknowledged by the State, the

consent addendum to appellant's plea agreement was approved and signed by the circuit court judge, and those documents are part of the record.

In *Grupa, supra*, this court determined that it was without jurisdiction because “[e]ven though there was a writing, specifically reserving the right to appeal the suppression issue, signed by the judge and the attorneys for each side, commemorating the oral entry of guilty pleas reserving this right six days earlier, we glean from the cases on this subject that the writing was not ‘contemporaneous.’” 83 Ark. App. at 391, 128 S.W.3d at 472. In making that determination, the court cited *Barnett, supra*, where the defendant entered his guilty plea on January 5, 1998 but “the only date on the relevant plea statement was the date that it was filed, the following day on January 6.” *Id.* Here, the plea agreement and accompanying addenda, along with all of the previously listed documents, were filed on the same date that appellant entered her pleas of guilty, May 10, 2006.

#### *Standard of Review*

When reviewing the circuit court's ruling on a motion to suppress evidence from a search, “we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court.” *Walley v. State*, 353 Ark. 586, 112 S.W.3d 349 (2003).

#### *Facts*

The suppression hearing in this case was held on May 2, 2006. Deputy Britt Simpson, a patrolman for the White County Sheriff's Department, testified that he was on duty at 2:45 a.m. on January 11, 2006, patrolling the area near 326 Gilliam Road, which turned out to be appellant's residence. He testified that he could smell a strong odor of a combination of chemicals that are associated with meth labs. He explained that when he smelled the odors, he contacted his sergeant, Randy Reed, who joined Simpson. Simpson testified that he got in Reed's patrol vehicle and they drove together to appellant's residence; that there were lights on in the house and they saw movement within; that they exited their vehicle and noticed a burning cigarette in the grass between the house and a shed; that the shed was approximately forty yards away from the house, to the side; that they approached the residence and knocked on the door; that a lady he identified as the appellant came to the door; that as the door opened, the odors "were so bad, it could knock you down ... [i]t was very, very strong"; that they asked the woman if anyone else was in the house and she responded, "Nate"; and that she "hollered" for the person named "Nate" and stated she did not know where he was.

Simpson recounted that, when Nate did not respond, he asked Sergeant Reed to stay with the woman while he walked around the side of the house, through a well-traveled gap between the house and the gate, to the back yard. He explained that when he did so, at the back of the house, he noticed a "curtain flying in through the window"; that he heard a fan running; that he walked over to the window where the curtain was "flailing outside the window" and he saw a meth lab inside. He explained that the fan was

blowing the odors outside and that the meth-lab components were on top of a table “and around.” He stated that he returned to the front of the residence and asked appellant again if she knew where Nate was and that she said she did not know where he went. Simpson testified that he and Reed then went inside “to make sure there was no one in there that may have been passed out or for their safety” because the chemical odor was so strong. He explained that they just walked through all of the rooms in the house looking for Nate; that when they were convinced he was not there, they came back outside and contacted Lt. Rick Williams; that they never allowed appellant to reenter the house because the odors were so strong and dangerous; that they also looked for Nate in the shed because the burning cigarette had been found between the shed and the house; and that “Nate” was not there.

Simpson testified that he provided to Detective Clark the information that was used in the affidavit for search warrant; that he looked at the affidavit before it was presented to the judge; and that it accurately reflected what he told Clark.

On cross-examination, Simpson also revealed that he noticed sores all over appellant’s arms when she came to the door; that the door of the shed was partially open; that he found a lot of “methamphetamine stuff” in that building, too; that Sergeant Reed accompanied him into the shed; that they did not call the fire department; that prior to entering the house, he asked appellant if Nate could be in the house and that she responded, “I don’t know where Nate is, but Nate is around here somewhere. Nate was here, before ya’ll pulled up”; that he was certified by the Drug Enforcement Agency; that

he has worked several meth labs; that he believed he had authority to enter the house because of the strong chemical smells, to make sure there were no persons in the house that could have been hurt by the chemical smells; and that anhydrous ammonia is highly dangerous to breathe.

On re-cross, he acknowledged that he did not have anything written in his reports stating that he went to the house to check on appellant's safety; that he could have done so without waiting for Officer Reed; that it took Reed ten minutes to get there; that he did not call the fire department or an ambulance in that interim; and that it was 2:45 in the morning and he "just wanted somebody with me."

Sergeant Randall Reed also testified at the suppression hearing. For the most part, his testimony tracked that of Simpson, but there were some instances where his testimony either differed from Simpson or added some information. For example, he stated that he did not look into the shed; that when they asked appellant if anyone else was in the house, he believed appellant said that "Nate" was in the bathroom; and that he had scars on his left arm from getting within three feet of anhydrous ammonia.

Preston Clark, a narcotic sergeant for the White County Sheriff's Department, testified that he typed the affidavit for the search warrant in this case based on information he received in a phone call from Officers Reed and Simpson. He identified photo exhibits as accurately reflecting the items that were seized from the house and outbuilding, and explained that he did actually go to appellant's residence.



After hearing arguments from counsel, the trial court took the matter under advisement and subsequently issued its ruling in open court on May 10, 2006. The court explained its decision to deny the motion:

The court believes that the actions of Deputy Britt Simpson and Deputy Randy Reed, ... were appropriate and lawful. The court believes that Deputy Simpson acted properly when, upon smelling a strong and distinctive odor of methamphetamine laboratory, he approached the only home in the neighborhood that appeared to have lights on and activity taking place. When he knocked on the door, the defendant appeared, came out on the porch. A stronger odor of a methamphetamine laboratory was emitting from the open door, that Detective Simpson said that he could smell. He is trained in methamphetamines. Law enforcement was knowledgeable of the smell of such a laboratory and I believe that Deputy Simpson was acting appropriately in going to the home to determine the source of the smell of the methamphetamine laboratory. Walking up on the porch and knocking on the door was not, in the court's opinion, either improper or illegal. When the defendant came out on the porch, she indicated that there were other, at least one other individual, present at the scene. According to the testimony of Mr. Simpson and Mr. Reed, she repeatedly called for an individual named Nate, calling out into the open space, in and around the home. The court believes that Deputy Simpson was justified in trying to determine if there was another individual in the presence of what he believed, validly to be an active methamphetamine laboratory, based on his trained smell. Detective Simpson walked around the side of the house and through an open window, and in plain view, observed an active methamphetamine laboratory, on the table, in the kitchen, I do believe was the location. He determined at that point in time, that it was necessary to enter the home, in an effort to determine if there was somebody named Nate. An individual within the home, possibly impaired physically because of the methamphetamine that he had observed being produced. He did, in this court's opinion, validly make an entry into the home because of the exigent circumstances of the active lab and the indications of Ms. Maddox, that there was somebody else present. He went into the home, did not find anybody else, but again observed the active methamphetamine lab. He exited the home, went to the door of the shed, behind the house, smelled a strong odor of ether, coming from that shed. The court believes that that smell, along with the smell of the methamphetamine and the view of the active methamphetamine lab, gave Officer Simpson exigent emergency cause to look inside that shed, as he did, for the safety of any individual that might be in that lab. Excuse me, in that shed. The opening of the door and the looking into that shed, was not improper or illegal in the

court's opinion. Pursuant to that contact with the defendant, what Officer Simpson and Officer Reed viewed and smelled, the affidavit for search warrant was prepared. The court has reviewed the affidavit for search warrant and finds that it sufficiently states probable cause for the issuance of the search warrant, which Judge Shoffner, did in fact, issue. The search warrant, it was agreed to at the suppression hearing, was executed in accordance to Arkansas law and a return of the items seized is set forth in State's Exhibit 4, and the court finds that those items will not be suppressed, but will be available to the State, for a trial of this case. I want to back up and reiterate, that the court finds that the search for Nate in the surrounding area of the home, within the home, and inside the shed, was justified under the emergency circumstances existing, and was also justified for the protection of the officers. We have, at 2 something in the morning, an active methamphetamine lab, and an indication by Ms. Maddox that there is somebody else present, within the area. The court finds that that creates a situation of great danger, if somebody else had been present. Not only to that individual but to the officers, themselves. The attempt to locate this individual, who Ms. Maddox had caused the officers to believe was present, was justified and proper, under those exigent circumstances.

In addition, the trial court addressed appellant's conditional plea at this May 10 hearing:

Now, the court has been informed, Mr. Johnson, that in light of that court's findings, the defendant and the State have entered into an agreement, whereby the defendant will enter a negotiated conditional guilty plea, wherein she reserves her right to appeal the adverse determination of her motion to suppress entered today.

#### *Discussion*

For her first point of appeal, appellant contends that the officers lacked both exigent circumstances and probable cause when they made their warrantless entry into appellant's home and the nearby outbuilding. We disagree.

In *Steinmetz v. State*, 366 Ark. 222, \_\_\_\_, \_\_\_\_ S.W.3d \_\_\_\_, \_\_\_\_ (2006), our supreme court explained:

Warrantless searches in private homes are presumptively unreasonable, and the burden is on the State to prove that the warrantless activity was reasonable. *See Baird v. State, supra*. An exception to the warrant requirement, however, occurs

where, at the time of entry, there exists *probable cause and exigent circumstances*. See *Mann v. State*, 357 Ark. 159, 161 S.W.3d 826 (2004). *Probable cause is determined by applying a totality-of-the-circumstances test and exists when the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed. See Baird v. State, supra. Exigent circumstances are those requiring immediate aid or action, and, while there is no definite list of what constitutes exigent circumstances, several established examples include the risk of removal or destruction of evidence, danger to the lives of police officers or others, and the hot pursuit of a suspect. See Mann v. State, supra. Under our case law, this court may only examine those exigent circumstances that existed at the time of the entry. See id.*

(Emphasis added.)

#### *Exigent Circumstances*

Rule 14.3 of the Arkansas Rules of Criminal Procedure provides:

Emergency searches.

An officer who has reasonable cause to believe that premises or a vehicle contain:

- (a) individuals in imminent danger of death or serious bodily harm; or
- (b) things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or
- (c) things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed; may, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction.

In *Loy v. State*, 88 Ark. App. 91, 104, 195 S.W.3d 370, 376 (2004), this court explained:

We hold that the initial entry of Officers Spenser and Willis was justified under subsection (a) of Rule 14.3 of the Arkansas Rules of Criminal Procedure.

*Based upon what the officers saw and smelled when appellant opened the door, they believed that methamphetamine was being manufactured, which, based upon their knowledge of meth labs, would pose a threat of immediate serious bodily harm to anyone in the residence. The officers also had reason to believe that there were other persons in the residence based upon the footsteps that they heard when they first arrived and the fact that there was a female sitting at the table who said that she thought there was a female in the back of the house. We hold that this was proper in light of the circumstances.*

(Emphasis added.) Similarly, in the instant case the officers were trained and experienced in dealing with meth labs, and they concluded that a meth lab was on the premises based upon the odors that they could smell. In addition, they had information from appellant herself that someone named “Nate” was either in the house or nearby, yet not responding to her calls. These facts provided the necessary exigent circumstances to justify entering the house without a warrant under Rule 14.3.

Moreover, there were exigent circumstances supporting entry of the shed as well. That is, as the officers explained, a burning cigarette was discovered between the house and the shed when they arrived, “Nate” was not in the house when they looked, appellant was reporting his presence, the door to the shed was ajar, and meth smells were emanating from it as well. The trial court clearly credited the officers’ testimony, and it was reasonable for them to think that “Nate” might have been in the shed, subject to the same noxious fumes as were coming from the house.

#### *Probable Cause*

In explaining its ruling from the bench, the trial court noted its reliance upon the case of *Walley v. State, supra*. In *Walley*, our supreme court explained:

Walley next alleges that there was no probable cause to search because: (1) a mere reference to a chemical odor does not, standing alone, constitute probable cause; (2) conclusory statements do not support probable cause; (3) there was an expectation of privacy in the curtilage, and the landlord did not have authority to consent to a search; and (4) the landlord had no knowledge of "cooking dope" at the residence. In the determination of probable cause, courts are to be liberal rather than strict. *Bennett v. State, supra*.

1. Odor of a Methamphetamine Lab - Walley is correct in stating that the odor of a legal chemical, by itself, does not constitute probable cause. See, e.g., *Bennett v. State*, 345 Ark. 48, 44 S.W.3d 310 (2001). However, the search warrant in this case was not based on the odor of a legal chemical. Agent Clark testified at the suppression hearing of his many years experience with illegal methamphetamine labs, and he testified that a methamphetamine lab has a distinctive smell. *Therefore, it was not the odor of a legal chemical that tipped agent Clark off to the probable presence of a methamphetamine lab in the residence. It was rather the distinctive odor of an illegal methamphetamine lab that contributed to his probable cause.* The instant case is more similar to those cases in which we have found that the odor of marijuana can be a factor supporting probable cause to search. See *Miller v. State*, 342 Ark. 213, 27 S.W.3d 427 (2000); *McDaniel v. State*, 337 Ark. 431, 990 S.W.2d 515 (1999); *Green v. State*, 334 Ark. 484, 978 S.W.2d 300 (1998); *Stout v. State*, 320 Ark. 552, 898 S.W.2d 457 (1995). *In the instant case, the distinctive odor of a methamphetamine lab was a valid contributing factor in establishing probable cause.*

353 Ark. at 603-04, 112 S.W.3d at 359. (Emphasis added.) As was true in *Walley*, here the officers were tipped off to the probable presence of a meth lab by the distinctive odor of an illegal meth lab. Thus, probable cause was also present here because, under the totality of the circumstances, the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information was sufficient to warrant a person of reasonable caution to believe that an offense had been or was being committed.

For her second point of appeal, appellant contends that because the initial entry to the home was illegal, all evidence gained as a result of that entry should be suppressed.

Because we have concluded that the initial entry was not illegal, it is unnecessary to address appellant's second point of appeal.

Affirmed.

MARSHALL and BAKER, JJ., agree.